MIRIAM Z. GRYNBERG

IBLA 85-772 Decided November 9, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing protest to a determination that a simultaneous noncompetitive oil and gas lease application was unacceptable.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

   If, on the face of Part B of a simultaneous oil and gas lease application, an applicant indicates the selection of a parcel by shading a tract number "bubble" for a tract which was not listed by parcel number as a parcel available for selection on the closing date for filing applications, such mark is surplus, and the application should not be deemed unacceptable for failure to submit the first year's rental and/or filing fee for that tract.

2. Appeals: Generally -- Oil and Gas Leases: Applications: Generally -- Payments: Refunds -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Notice of Appeal

   If an appellant fails to tender the first year's rental and filing fee when appealing from a decision that a simultaneous oil and gas lease application is unacceptable, the appeal will be dismissed for failure to comply with 43 CFR 3112.3(h). If, however, the first year's rental and filing fee have previously been tendered, and have not been refunded at the time of filing a notice of appeal, the previous submittal will suffice.

APPEARANCES: Phillip D. Barber, Esq., Denver, Colorado, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Miriam Z. Grynberg (Grynberg) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 26, 1985. In its decision, BLM dismissed Grynberg's protest of a BLM finding that her simultaneous noncompetitive oil and gas lease application was unacceptable.

In order to understand the reasoning leading to the holding in this case, it is necessary to set forth the sequence of events leading to the determination that the application filed by Grynberg was unacceptable.

On April 1, 1985, BLM posted a notice that 21 parcels of land in Wyoming were open for submittal of simultaneous oil and gas lease applications. The stated period for filing applications was from April 1 through April 19, 1985. In order to file, an applicant was required to file an acceptable application with BLM within that prescribed period.

On April 5, 1985, the Wyoming State Office, BLM, posted notice of deletion of five parcels from the list of parcels available, including parcel WY-231. On April 17, 1985, Grynberg filed an automated simultaneous oil and gas lease application. On Part B of her application she marked 21 selected parcels. 1/ She also submitted a check for $14,851 to cover filing fees and the first year's rental.

On June 3, 1985, BLM conducted its drawing. On the same date, Grynberg received an undated form notice that her application had been deemed unacceptable, with the following information indicated as being applicable to her application: "Insufficient Remittance: A fee of $75 plus the applicable first year's rental per parcel selected is required. You selected 21 parcels comprising 13,831 acres, requiring a total remittance of $15,406. Your remittance was $14,851." Those underlined figures had been inserted by hand. The balance was the preprinted form.

On June 24, 1985, Grynberg filed a protest of the BLM determination. In the protest, Grynberg explained that the check she had submitted was intended to cover the filing fees and first year's rental on 20 parcels, but was not intended to cover the "filing fee and rental due" for parcel WY-231, as that parcel had been withdrawn prior to the closing date for filing simultaneous oil and gas lease applications. She noted that the application, filing fee, and first year's rental amounts were proper and correct if the selection of deleted parcel WY-231 was not taken into consideration. Grynberg concluded that, because parcel WY-231 had been deleted from the list of parcels available for simultaneous oil and gas lease applications, the mark on her application indicating the selection of a deleted parcel should not render her application unacceptable. Grynberg stated:

> That check [was] intended to cover the filing fees and first year's rentals due on each of the parcels I have listed, with the exception of Parcel No. 231. Prior to the drawing, Parcel 231 was withdrawn by the Bureau of Land Management. Ms. Grynberg mistakenly submitted an Automated Simultaneous Oil & Gas Lease Application for Parcel 231, although that parcel was not available for lease. In other words, Ms. Grynberg submitted valid applications and proper fees and rentals for the 20 parcels which were listed.

1/ On the computerized automated simultaneous oil and gas lease application form, an applicant selects parcels by marking in pencil, on Part B of the form, a numbered circle ("bubble") corresponding to each parcel desired.

> She mistakenly submitted an application (with no fee or rental) for Parcel 231, which was not listed.

(Protest filed June 24, 1985). Grynberg stated that she had submitted sufficient funds for the 20 available parcels, and urged BLM to hold the application was improperly rejected.

BLM then issued its June 26, 1985, decision stating:

> Regulations at 43 CFR 3112.2-2 state: "Each Part B application form shall, when filed, be accompanied by a single remittance . . . of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit . . . an amount sufficient to cover all the parcels on each Part B application form . . . shall cause the entire filing to be deemed unacceptable." [Emphasis in original.]
>
> Your protest states that Ms. Grynberg's check, also dated April 17, 1985, ". . . intended to cover . . ." fees for all parcels ". . . with the exception of Parcel No. 231." It is not within our purview to determine the intent of checks or applications nor to presume to which of 21 parcels to apply fees. The Wyoming State Office made a good faith attempt, by publishing on April 5, 1985, the notice of deletion, to warn people not to file on parcel 231. If, as stated in your protest, "Ms. Grynberg mistakenly submitted an . . . Application for Parcel 231, although that parcel was not available for lease," it is indeed unfortunate. The fact is that Ms. Grynberg's application was unacceptable at the time it was filed and the subsequent parcel deletion does not alter that unacceptability. We believe the $75 assessment is proper. Your protest is hereby dismissed.

Grynberg then filed this appeal.

The basis for BLM's holding can be found at 43 CFR 3112.2-2. This regulation states:

> § 3112.2-2 Filing fees and rentals.
>
> Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both, shall cause the entire filing to be deemed unacceptable.

In her statement of reasons (SOR), Grynberg advances two arguments in support of her appeal. First, the failure to submit the fee and first year's

rental for parcel WY-231 was not a proper reason for finding her application unacceptable, because she had submitted sufficient funds for all available parcels. She notes that 43 CFR 3112.3(d) (1984) provides for the return of filing fees for a parcel removed from the parcel list by BLM. This being the case, Grynberg concludes she submitted "precisely the amount of money to which the BLM is entitled" (SOR at 2).

The second argument advanced by Grynberg was that the act of shading a "bubble" indicating the selection of a tract number, when the tract number does not represent a tract available for selection is a super-technical and trivial mistake, which should be considered a nonfatal error. Grynberg cites Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), in support of this contention, and argues that she committed a harmless error, such as that addressed by the Board in Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984).

In response to Grynberg's SOR, BLM submits a report (BLM Report), giving an explanation of its application processing procedures. Although we will quote from this document at some length, we deem it appropriate to set it out in full as APPENDIX I to this decision. BLM's primary argument is that, as a matter of administrative convenience, it would be impossible to screen applications for errors such as that made by Grynberg.

[1] The courts and this Board have previously rejected BLM determinations that oil and gas lease applications were unacceptable when the error used as a basis for the determination was trivial, such as the use of an address label substituting for a written name and address. Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980). In other cases, nonsubstantive errors made when completing simultaneous oil and gas lease application forms were inappropriate based for finding that an application was unacceptable or should be rejected. Conway v. Watt, supra (date did not accompany signature on drawing entry card); Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979) (inadvertently stamped word "agency," in return address of sole proprietorship, was surplusage and should not have triggered requirements for explanations of corporate status); Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983) (failure to fill in arabic numerals above computer blocks was a nonfatal error).

This Board has been lenient with simultaneous oil and gas lease applications when it was obvious that they were dated incorrectly or when the information written on the application was clearly incorrect. In Satellite Energy, supra, we said: "Even though appellant did not fill in the blocks as required by the instructions, we must look to the results of this error. * * * [T]he omission on the face of the appellant's applications was nonsubstantive and therefore the application should be further processed, all else being in order." Satellite Energy Corp., 77 IBLA at 172-73, 90 I.D. at 490. Excess verbiage, e.g., as appended to an offeror's name, can be and has been treated as surplusage. See, e.g., McClain Hall, 61 IBLA 202 (1982). In summary, if the information an applicant intends to submit is indicated clearly on the face of an automated simultaneous application, then rejection for improperly marking the application is rejection for a trivial reason.

On the other hand, it is not BLM's role to try to guess what an applicant intended when an application indicates the selection of more parcels than the attached check can cover. In many cases, it is impossible for BLM to determine what an applicant intends to include in an application with sufficient accuracy to render the application acceptable. For example, an offer is properly rejected when an over-the-counter oil and gas lease offer contains an incorrect land description. See, e.g., Bob G. Howell, 63 IBLA 156 (1982). It is, therefore, incumbent upon an applicant or offeror to clearly indicate the land for which he or she intends to apply. In such cases, all necessary information must be apparent on the face of an application or offer.

Thus, if the marked "bubble" indicating the selection of tract WY-231 can be treated as surplusage, the application filed by Grynberg is acceptable. If, however, BLM was required to look beyond the face of the application to ascertain Grynberg's intent when filing the application, it was properly deemed unacceptable. In determining which is the case, we will turn to the BLM explanation of the procedure it uses when processing applications:

> After the close of the filing period, we initiate the data input and balancing process. The applications are scanned through an optical mark reader, the data recorded on magnetic tape, and transmitted to the host computer in Denver. A computer printout (update) is obtained for each tape showing, by batch, the applications the computer has flagged for review. The computer flags applications which have a parcel number which is not on any posted list and those which have a fee imbalance. The fee imbalance is identified by the computer's comparing the amount entered in the Filing Fee Block with what the computer calculates should have been received (equal to parcels multiplied by $75 plus the advance rental for all selected parcels). Both overpayments and underpayments are flagged.
>
> The applications that have been flagged by the computer are manually reviewed by two examiners. The parcels are counted to ensure accuracy of the optical mark reader and the remittance is verified again by reference to a xerox copy of the check. At this time, the application is reviewed to ensure that the applicant has not filed on one of the parcels that had been identified as erroneously posted on the List of Land Available. If the application includes one of these parcels, and by deleting this parcel the remittance will be sufficient, the examiner will delete that parcel and reconcile the accounts. Note that this review includes only parcels which have been identified as having discrepancies between acreage and advance rental figures. In Ms. Grynberg's case, the deleted parcel was not one which had been identified as having a discrepancy in the published figures. If the application is indeed unacceptable, it will be deleted from the selection and the applicant notified after the selection results have been posted. A refund is prepared minus a $75 processing fee.

> After the balancing process is complete and all discrepancies are identified and accounts reconciled, special forms are completed by the examiners to correct the computerized data base. These forms will either delete an entire application, add a parcel, or delete a parcel. The correction forms (specially modified Part B forms) are scanned, the data recorded on magnetic tape, and the tape transmitted to Denver to update the file. These corrections are reviewed for accuracy.

(BLM Report at 1-2).

. It is important to note that BLM does not initiate the process of identifying those applications for which an insufficient payment is made until after the close of the filing period. When the initial computer run is completed,

> [t]he applications that have been flagged by the computer are manually reviewed by two examiners. * * * At this time, the application is reviewed to ensure that the applicant has not filed on one of the parcels that had been identified as erroneously posted on the List of Land Available. If the application includes one of these parcels, and by deleting this parcel the remittance will be sufficient, the examiner will delete that parcel and reconcile the accounts. [Emphasis added.]

(Id. at 1-2). BLM followed this procedure and then deemed Grynberg's application unacceptable. There is no question that BLM has an established process capable of identifying deleted parcels for which bubbles are darkened by applicants.

The fact that an applicant has shaded a "bubble" indicating a deleted selection will not render the application unacceptable when BLM has previously identified and deleted the parcel due to a published discrepancy. Such a parcel is not subject to the drawing, and a mark on Part B of an application indicating "selection" of that tract is deemed surplusage by BLM. In addition to those parcel numbers mentioned above, where there is a discrepancy between acreage and advance rental figures, the BLM explanation also notes that an application is not deemed unacceptable when "[f]or example, an applicant files on Wyoming Parcel 598, however, the posted list's highest numbered parcel is only 501, the applicant is notified that parcel 598 is not on the list and the excess of fees is refunded." (Emphasis added.) An application which indicates a parcel number out of the computer's range is not deemed to be unacceptable. The question remains whether selection of tract WY-231 should be deemed surplusage. BLM argues that it is not, stating that to hold otherwise would disrupt the system. BLM states:

> After reconciling the refunds, acceptable remittances, and retained fees against the amount deposited, the selection can take place. Just prior to initiating the selection, an examiner will call each State Office to verify that the Wyoming State Office has received all the current notices of deleted parcels. These notices appear any time during (and subsequent to) the filing.

> Often, it isn't until this phone call is made that Wyoming is aware of a parcel having been deleted. This list of deleted parcels is then entered into the computer and will result in a computer generated refund of filing fees for all applicants filing them.
>
> It may appear to the casual observer, as it appears to Ms. Grynberg, that we could just as easily have corrected her application in the same way as we do those with a "discrepancy" parcel. As a practical matter, this is not the case. From the day the lists are posted, the Wyoming Office is notified of deletions of parcels for various reasons. These notifications dribble in during and after the filing period, during the balancing procedure described above, and continue indefinitely beyond selection of priority applications, posting of results, and so on. In fact, there is no time limit for deleting a parcel. This is not the case with the parcels identified as having published discrepancies, and for which we do make a special effort to introduce corrections. For those parcels, we are able to identify them all by a time-certain, that is, before we begin the balancing procedure. If it were possible to CONSISTENTLY make the kind of correction Ms. Grynberg refers to, and if we could do so without unduly delaying the entire process, then we would do it. However, it is not possible to consistently make the correction without delaying the processing. To expand, assume that on day 18 (when we are beginning to balance accounts and identify insufficient fees), we are aware that a certain parcel has been deleted; presumably, we could credit applications identified as insufficient with the parcel known on that date to have been deleted. On day 25, assume we are informed of an additional deletion. We could correct for that deletion on applications processed then or subsequently, but we would have to go back into already processed applications in order to correct for that parcel. It should also be noted that the other State Offices may not inform Wyoming timely of a deletion. Although it is obviously humanly possible to keep going back to update deletions, we believe that would slow down the process to an unacceptable degree.

(BLM Report at 1-2 to 1-3).

There is, however, one flaw in the logic of the argument advanced in answer to the SOR. The net effect of deleting a tract from a list of lands available for simultaneous filing prior to the closing date for filing applications is to eliminate the tract from the drawing. This is distinguished from the withdrawal of a tract after the deadline for filing applications, which would make the tract available at the time of filing. Deleting a tract from the list of lands available precludes any filing for that tract. Therefore, any attempt to file an application for that tract is superfluous, just as if the tract were never posted.

BLM says it does not know all of the deleted parcels until after a drawing, because "notifications dribble in during and after the filing period." This situation would be easily remedied by requiring each State Office to submit a list of those tracts withdrawn prior to the close of the filing period immediately following the close of the filing period. Incorporating the updated list into the screening program as of the drawing date would ensure fairness to all applicants and not "unduly delay the entire process." If BLM were able to identify those tracts deleted prior to the closing date, an applicant's erroneous selection of that tract could be identified on the face of the application. BLM notes that applications such as Grynberg's are now identified by optical scanning by the computer after the closing date. Information regarding deleted tracts is available prior to the date applications are processed. We do not find it to be excessively burdensome for the State Offices to furnish lists of those tracts deleted prior to the closing date in a timely manner. There can be no question that this information is readily available immediately following that date.

Under the scenario advanced by BLM, it contends that it would be required to conduct additional screenings of applications for discrepancies which would not have been flagged as part of the preliminary screening of applications. However, additional computer screening is unnecessary because applications such as Grynberg's are now being identified in the course of processing applications. All that is necessary is to have the BLM State Offices identify all deletions made prior to a date certain -- the closing date for submittal of entries. It is obvious from BLM's explanation that the procedure for reviewing flagged applications is in place. BLM already conducts manual review of applications (891 between August 1984 and August 1985). Any delay resulting from identifying deleted tracts and taking those deletions into consideration during the one time manual review of the "flagged" applications is inconsequential.

[2] If there was nothing further, we would reverse the June 16, 1985, BLM decision, remand the case to BLM, and instruct BLM to conduct a drawing which included Grynberg as an applicant. However, we also find it necessary to address BLM's motion to dismiss the appeal because of Grynberg's failure to submit the filing fees and the first year's rental at the time of appeal as required by 43 CFR 3112.3(h). Subsequent to the determination that Grynberg's application was unacceptable, BLM refunded her first year's rental and filing fee, less $75. There is nothing in the record to indicate when the refund was made. Therefore, it could be that the refund was made after the notice of appeal was filed, the refund and notice of appeal crossed in the mail, or the refund was received before the notice of appeal was sent to BLM. If the refund had been received before sending the notice of appeal, 43 CFR 3112.3(h) would clearly apply. If, on the other hand, a notice of appeal is filed before issuance of a refund check, the funds previously submitted could be retained. Nothing would be served by requiring an appellant to submit an additional amount equal to that being held by BLM. If the two documents crossed in the mail, it would not be unreasonable to allow an appellant the opportunity to submit the amount called for as the appellant would have no way of knowing the refund had been made when sending the notice of appeal.

Thus, if Grynberg received the refund subsequent to the date the notice of appeal was filed, BLM should now give Grynberg an opportunity to submit $14,776, which amount must be tendered prior to taking further action on her application. If, on the other hand, Grynberg received the refund prior to the date the notice of appeal was filed, 43 CFR 3112.3(h) would apply, the case will be closed and no further action need be taken on the application. Not knowing whether 43 CFR 3112.3(h) is applicable, we will remand the case to BLM for further processing. If BLM determines the refund was received prior to the date the notice of appeal was filed, BLM should issue a decision denying Grynberg the right to a redrawing for failure to submit the necessary funds pursuant to 43 CFR 3112.3(h). If, on the other hand, BLM finds Grynberg had not received the refund prior to filing the appeal, Grynberg shall be given a reasonable time to submit $14,776. If submitted, a drawing shall be held. If not, a decision should be issued that Grynberg was not entitled to participate in the drawing, and that $1,425 is owing pursuant to the provisions of 43 CFR 3112.3(h). In view of this holding, the BLM motion to dismiss the appeal is denied. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed and remanded for further action consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member.

2/ Twenty tracts times $75 less the $75 retained by BLM.

ATTACHMENTS:

APPENDIX I

Near the beginning of each filing period, which commences the first working day of even-numbered months, the Wyoming State Office receives the respective Lists of Lands Available from each of the twelve Bureau (State) Offices. The lists are reviewed to ensure that the rental amount and acreage amounts agree. If there is a discrepancy, the parcel is noted for special attention.

For each parcel, the parcel number and the required advance rental fee are entered into the computer's data base during the first week of the filing period. At this time, for those parcels with discrepancies on the posted list, the lesser amount is initialized for rental. For example, if a list shows an acreage of 240.71 acres and an advance rental fee of $240 (the correct fee should be $241), the figure of $240 is entered. This ensures that a person relying on a published figure which is in error will not be penalized. Ultimately, parcels with published errors will be deleted.

Applications begin arriving the first few days of the filing, and the volume increases drastically the last week of the filing. Processing of applications begins the same day they arrive in the office. The examiner will check the remittance and compare it against the remittance amount darkened on the Part B application in the Filing Fee Block. If there is a discrepancy, the examiner can change the amount on the Part B. This is the only field that the examiner can alter. The examiner will also check for signatures, attachments, and lack of an identification number (on both Parts A and B), signifying a Bureau Applicant Number (BAN) is desired. The remittance and application form will be stamped with a unique number for later tie-back when balancing. After a batch of approximately 50 applications is processed, it is assigned a unique batch number. The checks are copied and deposited and the forms stored in a vault until after the close of the filing period. This effort is streamlined to ensure that deposits of fees are made as quickly as possible.

After the close of the filing period, we initiate the data input and balancing process. The applications are scanned through an optical mark reader, the data recorded on magnetic tape, and transmitted to the host computer in Denver. A computer printout (update) is obtained for each tape showing, by batch, the applications the computer has flagged for review. The computer flags applications which have a parcel number which is not on any posted list and those which have a fee imbalance. The fee imbalance is identified by the computer's comparing the amount entered in the Filing Fee Block with what the computer calculates should have been received (equal to parcels multiplied by $75 plus the advance rental for all selected parcels). Both overpayments and underpayments are flagged.

The applications that have been flagged by the computer are manually reviewed by two examiners. The parcels are counted to ensure accuracy of the optical mark reader and the remittance is verified again by reference to a xerox copy of the check. At this time, the application is reviewed to ensure that the applicant has not filed on one of the parcels that had been identified as erroneously posted on the List of Land Available. If the application includes one of these parcels, and by deleting this parcel the remittance will be sufficient, the examiner will delete that parcel and reconcile the accounts. Note that this review includes only parcels which have been identified as having discrepancies between acreage and advance rental figures. In Ms. Grynberg's case, the deleted parcel was not one which had been identified as having a discrepancy in the published figures. If the application is indeed unacceptable, it will be deleted from the selection and the applicant notified after the selection results have been posted. A refund is prepared minus a $75 processing fee.

After the balancing process is complete and all discrepancies are identified and accounts reconciled, special forms are completed by the examiners to correct the computerized data base. These forms will either delete an entire application, add a parcel, or delete a parcel. The correction forms (specially modified Part B forms) are scanned, the data recorded on magnetic tape, and the tape transmitted to Denver to update the file. These corrections are reviewed for accuracy.

After reconciling the refunds, acceptable remittances, and retained fees against the amount deposited, the selection can take place. Just prior to initiating the selection, an examiner will call each State Office to verify that the Wyoming State Office has received all the current notices of deleted parcels. These notices appear any time during (and subsequent to) the filing. Often, it isn't until this phone call is made that Wyoming is aware of a parcel having been deleted. This list of deleted parcels is then entered into the computer and will result in a computer generated refund of filing fees for all applicants filing them.

It may appear to the casual observer, as it appears to Ms. Grynberg, that we could just as easily have corrected her application in the same way as we do those with a "discrepancy" parcel. As a practical matter, this is not the case. From the day the lists are posted, the Wyoming Office is notified of deletions of parcels for various reasons. These notifications dribble in during and after the filing period, during the balancing procedure described above, and continue indefinitely beyond selection of priority applications, posting of results, and so on. In fact, there is no time limit for deleting a parcel. This

is not the case with the parcels identified as having published discrepancies, and for which we do make a special effort to introduce corrections. For those parcels, we are able to identify them all by a time-certain, that is, before we begin the balancing procedure. If it were possible to CONSISTENTLY make the kind of correction Ms. Grynberg refers to, and if we could do so without unduly delaying the entire process, then we would do it. However, it is not possible to consistently make the correction without delaying the processing. To expand, assume that on day 18 (when we are beginning to balance accounts and identify insufficient fees), we are aware that a certain parcel has been deleted; presumably, we could credit applications identified as insufficient with the parcel known on that date to have been deleted. On day 25, assume we are informed of an additional deletion. We could correct for that deletion on applications processed then or subsequently, but we would have to go back into already processed applications in order to correct for that parcel. It should also be noted that the other State Offices may not inform Wyoming timely of a deletion. Although it is obviously humanly possible to keep going back to update deletions, we believe that would slow down the process to an unacceptable degree.

To digress for a moment, this office handles gross receipts of from $70 to $110 million during a filing period. Most of that money is advance rental fees which we hold in trust until the selection results are known. As soon as possible, refunds of those fees are prepared for losing applicants. Since the advance rental system has been in place (August 1984) we have processed refunds of advance rentals in amounts ranging from $100.4 million to $61.5 million. It is difficult to justify steps in the processing which would delay execution of these refunds for even one day, particularly where the delaying step is to correct an applicant's error.

Over the period August 1984 to August 1985, 891 applications were insufficient (average of 127 for the seven filings). During the same period there were 249 deleted parcels (average of 35+ for the seven filings). These are not insubstantial numbers, and although it would be easy enough to correct one or two through special handling, the aggregate would result in substantial delays. Clearly, there must be a cut-off time after which we must proceed without continually going back to check, recheck, correct, and recorrect. It is our position that where our error in printing a list would result in confusion and possible problems with fees, where we can make a cut-off which will affect all applicants in the same way, and where the corrections will not introduce serious delays in processing, then we will undertake the corrections. Conversely, where the applicant submits insufficient fees through <u>their own</u> [sic] error, and where correcting

such errors would result in inconsistency and delay, then we will not undertake the correction. The latter situation applies to Ms. Grynberg. It should also be noted that if Ms. Grynberg is granted the requested relief, to have her application reinstated, that will result in a reselection for the twenty parcels. If she is selected in priority, that will displace the original priority selectee. If the error was wholly ours and if Ms. Grynberg was wholly innocent of error, then a reselection would be in order. That is not the case. Ms. Grynberg did commit an error, as she acknowledges, and she is now asking that innocent parties, the already selected applicants, should bear the burden of that error.

Ms. Grynberg's error is not ". . . super-technical or trivial" as she contends. Correcting errors such as she made would make the selection much later, create a need for more computer time, and delay refunds to applicants aggregating tens of millions of dollars.

Ms. Grynberg points out that there is a field on the ". . . Notice of Unacceptable Filing . . .," form WY 3112-16 (Aug. 1984) for overpayment of fees and for a "parcel not on the current posted notice." (Emphasis added.) This field is used only when an applicant files on a parcel that is out of the computer's range. For example, an applicant files on Wyoming Parcel 598, however, the posted list's highest numbered parcel is only 501. The applicant is notified that parcel 598 is not on the list and the excess of fees is refunded.

Every effort is taken to include an applicant in the selection if the land has been posted on the list erroneously. This error is caught up front and does not cause serious setbacks and delays. Ms. Grynberg contends that we should have known what she really intended. This is hardly credible. When an application is received with insufficient fees, it is not for us to determine what parcels were intended to be selected and which were not. Imagine if the application were insufficient by MORE than the amount due for a deleted parcel. Should we then delete another (larger acreage) parcel instead, thus making the whole sufficient? These possibilities lead one into a rat's nest of choices -- none of which is within our purview. Our only defensible position is to process the application as submitted, without making ANY changes.

If occasionally the result appears arbitrary and unreasonable, as it may appear in this case, it is first necessary to evaluate the effects of taking the requested action on behalf of everybody in similar circumstances. Such an evaluation implies a thorough knowledge of the procedures and constraints involved. What appears to be a rational and reasonable solution as applied to an individual may become a burdensome and unrealistic solution as applied to the whole.

Conclusion

Due to the extent of extra work, increased computer time, delayed posting of selection results, and delayed return of advance refunds, it is not the policy of this office to give special treatment to applications deemed insufficient because of an erroneous filing on a deleted parcel. We do not consider Ms. Grynberg's error as minor.

Regulations at 43 CFR 3112.2-2 state: "Each Part B application form shall, when filed, be accompanied by a single remittance of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit . . . an amount sufficient to cover all the parcels on each Part B application form . . . shall cause the entire filing to be deemed unacceptable."

Ms. Grynberg did not submit remittance enough to cover all the selections she made. The fact is that Ms. Grynberg's application was unacceptable at the time it was filed and the parcel deletion does not alter that unacceptability. We believe that the application was correctly determined to be unacceptable and that the $75 processing fee was retained in accordance with regulations. We do not agree that a redrawing on Ms. Grynberg's remaining 20 parcels is in order; on the contrary, such a reselection would work to the detriment of all other applicants, especially priority selectees, who filed their application without error.

We note further noncompliance with regulations in the execution of the appeal. Regulations at 43 CFR 3112.3 (h) state:

> In order to appeal a decision of the authorized officer not to accept an application under 3112.3 of this title, the applicant shall submit a copy of the returned application, the filing fee, the first year's rental, and a notice of appeal. The filing fee shall be retained regardless of the outcome of the appeal.

On June 7, 1985, counsel for Ms. Grynberg filed a protest of our action. In that protest, counsel requested that we not refund application fees or delay (sic) rental payments on the twenty parcels in the redrawing. At this date, the refunds were already executed or in process. In our decision of June 26, 1985, rejecting the protest, it was stated that a $75 processing fee was assessed, and the remainder of fees was refunded. The appeal of July 16, 1985, should have been accompanied by fees of $14,851. No fees were submitted nor have they been to date. It is the obvious intent of the regulations to retain the filing fees, in the amount of $1,500 (20 X $75), should the appeal be dismissed. We do not have those fees.